

IN THE UNITED STATES DISTRICT COURT FOR THE
FOR THE DISTRICT OF DELAWARE

ROCEP LUSOL HOLDINGS LIMITED
Plaintiff and Counterclaim defendant,
v.
PERMATEX, INC. and
ULTRAMOTIVE CORPORATION
Defendant

Civil Action No. –CV-05-141(KAJ)

**DECLARATION OF CHRISTIAN T. SCHEINDEL IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
OF NON-INFRINGEMENT**

CHRISTIAN T. SCHEINDEL, hereby declares and says the following under the penalty of perjury, pursuant to 28 U.S.C. § 1746:

1. I am President of Defendant Ultramotive Corporation. I give this declaration in support of Defendants' Motion for Summary Judgment of Non-infringement.

2. I am familiar with Defendants' accused lever-operated dispensing cans. Hereafter, I refer to them as "Defendants' dispenser."

3. Provided herewith is an actual sample of Defendants' dispenser. The container has not been pressurized and does not contain product to be dispensed. The components of the dispensing container have been labeled for ease of reference.

4. On the sample of Defendants' dispenser, the component labeled "nozzle" corresponds in many respects with the nozzle assembly described in the '064 patent. There are differences, however. These difference include that the surface of the nozzle assembly with which the lever comes into contact does not have a cam surface, unlike the corresponding actuator portion of nozzle assembly described in the '064 patent.

5. On the sample of Defendants' dispenser, the component labeled "hinge" corresponds in many respects with the hinge assembly as described in the '064 patent. There are differences, however, including that the nozzle assembly and the hinge assembly of Defendants' dispenser cannot be preassembled with the lever into a nozzle/hinge subassembly, as can the same components in the '064 patent. Also, the hinge assembly in Defendants' dispenser can be removed from the dispenser.

6. On the sample of Defendants' dispenser, the component labeled "lever" is a lever pivotally attached to the hinge assembly. The lever has a bearing portion, the slight bend that comes into contact with the nozzle assembly. This corresponds to the lever of the '064 patent.

7. The nozzle assembly and hinge assembly of Defendants' dispenser remain separate components that are never preassembled together to form a nozzle/hinge subassembly.

8. In normal operation of Defendants' accused dispenser, the nozzle assembly is unscrewed up the stem of the valve to the desired height. Because the lever bearing portion rests on the actuator portion of the nozzle assembly, this raises also the lever into an actuating position.


9. When the user grips the lever, it pushes down on the nozzle, which in turn correspondingly pushes down on the valve stem to which it is attached, thus opening (i.e., breaking the seal of) the valve to release the contents of the container.

10. At no time during this operation of Defendants' dispenser does the nozzle assembly ever come into contact with the hinge assembly. Also, as indicated above, the nozzle assembly cannot be preassembled with the hinge assembly.

11. In Defendants' dispenser, even if the nozzle assembly is screwed down completely or screwed off entirely, it never touches the hinge assembly.

12. Any contact between the nozzle assembly and the hinge assembly is physically impossible during normal use of Defendants' dispenser.

I declare that the foregoing is true and correct and based upon my own personal knowledge. Executed on June 29, 2006.


Christian T. Scheindel